

STATE OF MICHIGAN  
COURT OF APPEALS

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FEDERATED PUBLICATIONS,

Plaintiff-Appellant,

v

LANSING CITY COUNCIL,

Defendant-Appellee.

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UNPUBLISHED

October 22, 2002

No. 234210

Ingham Circuit Court

LC No. 01-092995-AZ

Before: Talbot, P.J., and Whitbeck, C.J., and Gage, J.

PER CURIAM.

Plaintiff brought this action alleging that defendant violated the Open Meetings Act (OMA), MCL 15.261 *et seq.*, in its selection of candidates for public office positions. The trial court granted defendant's motion for summary disposition. Plaintiff appeals as of right. We affirm.

Plaintiff alleged that on January 8, 2001, city council members selected the final candidates to interview for City Clerk and City Council Member positions by each circling three names on a piece of paper. The votes were then tallied to determine the finalists who would receive second interviews. Plaintiff asserted that the anonymity of this process constitutes a secret ballot because the process does not attribute the choices of finalists to the individual council members who voted for them. On January 11, 2001, plaintiff brought this action alleging that the selection process violated the OMA and seeking declaratory and injunctive relief, as well as costs and attorney fees.

Plaintiff moved for summary disposition. Defendant opposed the motion and moved for summary disposition in its own favor pursuant to MCR 2.116(C)(8), MCR 2.116(C)(10), and MCR 2.116(I)(2). In response to the action filed by plaintiff, the city council convened on January 13, 2001. At that meeting, each council member publicly indicated the candidates whom he or she had selected on January 8, 2001, and the council subsequently reenacted the January 8, 2001 decision. Defendant argued that this reenactment cured any defect in the prior proceedings and nullified any violation of the OMA.<sup>1</sup> Defendant argued that no case or

<sup>1</sup> Defendant continued to deny any violation of the OMA. The agenda and minutes of the January 13, 2001 meeting indicate that the reenactment of the earlier decision was intended to erase all doubt about the January 8, 2001 procedures and to fill the vacancies in a timely manner.

controversy remained, and that summary disposition of plaintiff's declaratory judgment action was proper. Defendant further argued that because plaintiff had abandoned its requests for an injunction or an invalidation of the January 8, 2001 actions, plaintiff had no basis to seek costs and attorney fees. Plaintiff responded that defendant had not admitted to any violation of the OMA, and therefore the court should have granted declaratory relief, and injunctive relief if necessary, in order to prevent defendant from utilizing the same secret voting procedure in the future. Plaintiff also argued that declaratory relief alone is sufficient to justify awarding plaintiff costs and attorney fees. The trial court agreed with defendant and dismissed plaintiff's claim in its entirety.<sup>2</sup>

A motion for summary disposition under MCR 2.116(C)(10)<sup>3</sup> tests the factual support of a claim and is subject to review de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, in the light most favorable to the party opposing the motion. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996); MCR 2.116(G)(5). A trial court properly grants summary disposition if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999).

The purpose of the OMA is to promote governmental accountability by facilitating public access to official decision making, and to provide a means through which the general public may better understand issues and decisions of public concern. *Manning v East Tawas*, 234 Mich App 244, 250; 593 NW2d 649 (1999). Plaintiff contends that defendant's procedures during the January 8, 2001 meeting violated MCL 15.263(2), which provides that "[a]ll decisions of a public body shall be made at a meeting open to the public." Defendant argues that its subsequent reenactment of the January 8, 2001 decision renders any violation a nullity, pursuant to MCL 15.270(5), which provides:

In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

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<sup>2</sup> At oral argument, both parties also debated the merits of plaintiff's action regarding whether the council's actions of January 8, 2001 were violative of the OMA. The trial court granted summary disposition on the ground that no case or controversy existed after the January 11, 2001 reenactment.

<sup>3</sup> Because the trial court looked beyond the pleadings in granting summary disposition, we review the motion under MCR 2.116(C)(10).

We conclude that the trial court properly granted summary disposition. The reenactment of the challenged decision on January 13, 2001 removed any basis for invalidating the January 8, 2001 actions of the council, and “that decision now stands untainted by procedural deficiency.” *Manning, supra* at 252. Plaintiff argues that declaratory relief is still warranted in order to prevent future OMA violations. We disagree.

“The existence of an ‘actual controversy’ is condition precedent to invocation of declaratory relief.” *Citizens for Common Sense in Gov’t v Attorney General*, 243 Mich App 43, 54-55; 620 NW2d 546 (2000), quoting *Kuhn v East Detroit*, 50 Mich App 502, 504; 213 NW2d 599 (1973); MCR 2.605(A). An actual controversy exists where a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve the plaintiff’s legal rights. *Durant v State of Michigan (On Remand)*, 238 Mich App 185, 204; 605 NW2d 66 (1999). An actual controversy does not exist where the injury sought to be prevented is hypothetical. *Shavers v Attorney General*, 402 Mich 554, 589; 267 NW2d 72 (1978); *Citizens for Common Sense in Gov’t, supra* at 55. In the absence of an actual controversy, the circuit court lacks subject-matter jurisdiction to enter a declaratory judgment. *McGill v Automobile Ass’n of Michigan*, 207 Mich App 402, 407; 526 NW2d 12 (1994).

After the reenactment, no actual controversy remained. Plaintiff’s concerns about defendant’s future conduct of meetings, in the absence of any evidence of prior or intentional wrongdoing, do not warrant declaratory or injunctive relief. See *Nicholas v Meridian Charter Tp Bd*, 239 Mich App 525, 534; 609 NW2d 574 (2000); *Schmiedicke v Clare School Bd*, 228 Mich App 259, 267; 577 NW2d 706 (1998); *Wilkins v Gagliardi*, 219 Mich App 260, 276; 556 NW2d 171 (1996). Accordingly, we need not address the merits of plaintiff’s claim. Because plaintiff did not obtain relief in the action, it is not entitled to costs and attorney fees. See *Nicholas, supra* at 239-240 n 3; *Felice v Cheboygan Co Zoning Comm’n*, 103 Mich App 742, 746; 304 NW2d 1 (1981).

Affirmed.

/s/ Michael J. Talbot  
/s/ William C. Whitbeck  
/s/ Hilda R. Gage